

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Application by Verizon New Jersey)	
Inc., Bell Atlantic Communications,)	
Inc. (d/b/a Verizon Long Distance),)	WC Docket No. 02-67
NYNEX Long Distance Company)	
(d/b/a Verizon Enterprise Solutions),)	
Verizon Global Networks Inc., and)	
Verizon Select Services Inc., for)	
Authorization To Provide In-Region,)	
InterLATA Services in New Jersey)	

**REPLY COMMENTS ON BEHALF OF THE
NEW JERSEY DIVISION OF THE RATEPAYER ADVOCATE
ON SUPPLEMENTAL FILING OF VERIZON NEW JERSEY**

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The New Jersey Division of the Ratepayer Advocate (“Ratepayer Advocate”) hereby submits these reply comments in response to the Public Notice issued in this proceeding on March 26, 2002 (DA 02-718) requesting comment on the refiled 271 application (“Application”) filed by Verizon New Jersey, Inc. (“Verizon”).¹ We concur with the concerns raised by the Department of Justice (“DOJ”) in its April 15, 2002 Evaluation regarding Verizon’s hot cut rates and its provision of electronic billing.² These flaws, coupled with Verizon’s failure to

¹ In the Matter of Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in New Jersey, WC Docket No. 02-67 (March 26, 2002) (“Verizon Supplemental Filing”).

² See Evaluation of the United States Department of Justice, In the Matter of Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance

demonstrate that its nonrecurring costs are TELRIC compliant, preclude the approval of Verizon's application at this time.³

1. CONCERNS RAISED BY THE DOJ CONFIRM THAT VERIZON'S APPLICATION FAILS TO MEET CHECKLIST ITEM 2 - NONDISCRIMINATORY ACCESS TO UNES

1. Problems With Verizon's Hot Cut Rates Still Remain Unresolved

In its comments on Verizon's first 271 filing, the DOJ voiced its concerns "that the New Jersey Board of Public Utilities . . . had not issued a final order with respect to UNE rates and that the record did not include a justification for non recurring Charges ("NRCs") for "hot cuts."⁴ Verizon's March 20, 2002 letter unilaterally reducing its hot cut rate in New Jersey to \$35 does not address the DOJ's concerns and therefore changes nothing. The DOJ restated its concerns in the present proceeding by recommending that, "[i]n addition to its assessment of whether Verizon's newly-reduced hot-cut NRCs are TELRIC-compliant, the Commission should also assure itself that Verizon's commitment will remain in place for a sufficient time to allow competitive entry."⁵ Absent any evidence that the new \$35 rate is TELRIC compliant and that

Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in New Jersey, WC Docket No. 02-67 April 15, 2002 ("DOJ New Jersey II Evaluation").

³ The Ratepayer Advocate incorporates by reference its comments filed in the initial 271 proceeding with the FCC in CC Docket 01-34 ("Verizon NJ I"): Initial Comments (January 14, 2002)("RPA Verizon I Initial Comments"); Reply Comments (February 1, 2002)("RPA Verizon I Reply Comments"); Comments to Public Notice, DA 02-580) (March 13, 2002)("RPA BPU UNE Order Comments").

⁴ See Evaluation of the United States Department of Justice, In the Matter of Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in New Jersey, FCC CC Docket No. 01-347, January 28, 2002 at 6-8. ("DOJ New Jersey I Evaluation").

⁵ DOJ New Jersey II Evaluation at 4-5.

the rate will remain in place long enough to spur competition, Verizon's current 271 Application suffers from the same fatal flaws that caused it to withdraw in the first place.⁶

Verizon's reduction of its hot cut rate to \$35 is indicative of its true motive. Verizon hopes that by creating a red-herring, reflected in its gratuitous non-binding new hot cut rate, the underlying issue of whether Verizon's hot cut rate is TELRIC compliant, will simply cease to exist. It is not enough for Verizon to reduce its rate without first providing sufficient evidence to meet its burden to show that the reduced rate is TELRIC compliant. In order for Verizon to meet Checklist Item 2, *all* of its rates must be TELRIC compliant. Indeed, by lowering its rate so far into the review process, Verizon engages in precisely the type of behavior admonished by the Commission. In its *Kansas/Oklahoma* decision, the Commission stated that:

⁶ Verizon Withdrawal Letter, CC Docket No. 01-347 (dated March 19, 2002), ("Nonetheless, process concerns have been raised with respect to an issue that has been the focus of dispute between parties – the non-recurring charge for performing a hot cut. To address these concerns, Verizon....is withdrawing its applications...").

“we emphasize that we do not intend to allow a pattern of late-filed changes to threaten the Commission’s ability to maintain a fair and orderly process for consideration of section 271 applications” and “we share, to some extent, the concerns expressed by a number of parties that applicants might attempt to use grant of this waiver to ‘game’ the section 271 process with repeated last minute rate reductions.”⁷

Verizon’s promise to reduce its rate to \$35 is also illusory because it does not bind Verizon to apply the new rate for a specific, or even reasonable, period of time. Verizon claims that the \$35 “net rate will be in effect until either the sooner of two years or the Board’s final resolution of the AT&T motion regarding hot cut pricing in this proceeding, unless the Board otherwise modifies the rate.”⁸ As demonstrated in its statement, there exists nothing to force Verizon to maintain the rate for a set period of time. For instance, if the Board denies AT&T’s motion (in whole or in part) tomorrow, Verizon would not be bound to charge the \$35 reduced hot cut rate. Thus, the supposed benefits to be received from the rate reduction are tenuous, at best, and possibly illusory.

⁷ Memorandum Opinion and Order, In re: Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, 16 FCC Rcd 6237 (Jan. 19, 2001), at para. 25, *remanded in part, Sprint Communications Co. v. FCC*, 274 F.3d 549 (D.C. Cir. 2001). (“Kansas/Oklahoma Order”).

⁸ Verizon Supplemental Filing, Declaration of Patrick A. Garzillo, and Marsha S. Prosini, Attachment 1 at 2.

Additionally, by stating that its reduced hot cut rates would remain in effect for the “sooner” of two years *or* the Board’s final resolution of AT&T’s hot cut motion, Verizon implies that there is a possibility that Board would not resolve AT&T’s motion within two years. There is no basis for Verizon’s presumption. In fact, the correct presumption is that the Board would, in all likelihood, resolve AT&T’s motion within a short period of time, and definitely prior to the elapse of two years. Thus, Verizon would never be bound to offer the reduced hot cut rate for a time even nearing two years. Once again, Verizon’s attempts to mislead illustrate how empty Verizon’s promise truly is.

Verizon also erroneously claims that, “this net rate mirrors the result of a settlement agreement recently entered into in New York State that was endorsed by more than a dozen competitive local exchange carriers.”⁹ However, unlike in New York, Verizon has not engaged in any negotiations in New Jersey, but rather, simply offers a take-it-or-leave-it rate that may hinder competitive entry. Also unlike in New York, due to the expedited schedule in the 271 proceeding, the Board has not been given time to review the TELRIC-compliance of the \$35 rate, standing on its own, in New Jersey. Thus, the new \$35 reduced rate, has not been approved by the Board. Currently, absent Board approval of the \$35 rate, there is no regulatory certainty that the reduced hot cut rates will remain in effect. In fact, in no other 271 proceedings has the FCC accepted a voluntarily reduced rate prior to the rate being adopted by the state commissions.¹⁰

⁹ *Id.*

¹⁰ See *Kansas/Oklahoma Order* at para. 23 fn. 63 (where the Commission approved Verizon’s rate reduction only because “there [was] no uncertainty concerning the availability of these rates to competing LECs” and because the “Kansas Commission has approved these rate reductions with the reductions to become effective immediately.”); *see also*, Memorandum Opinion and Order, In re: Application of Verizon New

England, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services, Inc., for Authorization to Provide In-Region, InterLATA Services in Rhode Island, FCC CC Docket No. 01-324 (February 22, 2002) at para. 11. (citing to the state commission's approval of the reduced rate.) (*Rhode Island Order*).

Verizon could have waited to refile its 271 application to give the Board time to review the rate reduction but chose not to. In short, Verizon's actions stifle competitive entry in New Jersey because there is no evidence in the record that Verizon's new hot cut rate is TELRIC compliant and that Verizon would maintain the reduced rate for a reasonable period of time. Such actions are clearly not in the public interest, and therefore, the Commission should deny approval of Verizon's 271 Application.

B. Lack of Actual Commercial Usage Negates a Showing that Verizon NJ Provides Nondiscriminatory Access to Electronic Billing Functions

The Ratepayer Advocate maintains its position that Verizon fails to demonstrate compliance with its OSS obligations, because it offers no reliable evidence that it can produce a readable, auditable, and accurate electronic wholesale bill. The DOJ echoed this sentiment in their recent evaluation of Verizon New Jersey's re-filed 271 application, in which they acknowledge that Verizon's wholesale billing system may warrant further scrutiny by the FCC because it runs the risk of not complying with OSS requirements.¹¹

¹¹ DOJ New Jersey II Evaluation at 3, 7; *see also* DOJ New Jersey I Evaluation at 5 n.21. The DOJ also recommended that the FCC conduct post-monitoring of Verizon's billing systems if they decide to grant Verizon section 271 approval. *Id.* at 7.

In order to prove that it provides nondiscriminatory access to electronic billing functions in New Jersey, Verizon relied primarily on the results of examinations of wholesale bills conducted by PricewaterhouseCoopers (“PWC”) and KPMG.¹² Verizon’s exclusive reliance on third-party testing to show compliance with OSS functions is not only flawed but runs afoul of prior section 271 orders which state that third-party studies are not the most probative evidence of a BOC’s compliance with section 271,¹³ but that, “the most probative evidence that OSS functions are operationally ready is actual commercial usage.”¹⁴

¹² Verizon NJ I, Declaration of Kathleen McLean, Raymond Wierzbicki and Catherine T. Webster ¶ 118.(“Verizon NJ I - McLean/Wierzbicki/Webster/Canny Decl.”)

¹³ See *I/M/O Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. or Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, CC Docket No. 01-138, Memorandum Opinion and Order at ¶ 33, (Sep. 19, 2001) (“*Pennsylvania Order*”) (citing *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order ¶ 53 (1999) (“*New York Order*”); *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, Memorandum Opinion and Order at ¶ 138, CC Docket No.97-137 (1997) (“*Michigan Order*”)).

¹⁴ *New York Order* ¶ 89; *Michigan Order* ¶ 138.

The third-party studies of PWC and KPMG cannot substitute for reliable commercial data because as Verizon admits, PWC did not test the completeness or accuracy of the billing information on the Bill Data Type (“BDT”)¹⁵ because it was found to match the paper bill which KPMG had previously tested and found to be accurate and complete.¹⁶ It is also inappropriate for Verizon to rely on KPMG to substantiate that it provides nondiscriminatory access to *all* OSS functions when KPMG only tested the accuracy of its paper bills.¹⁷ Therefore, neither KPMG nor PWC assessed the accuracy of the electronic bills which is an important determination and of critical importance to many CLECs.¹⁸ In fact, Verizon’s testimony revealed that deficiencies did exist in the electronic billing system.¹⁹ Of the six assertions that were reviewed by PWC, four were found to contain flaws relating to the BDT bills’ inability to match up with the paper bills and the manual review and adjustment process failing to allow for recalculation of adjustments.²⁰

¹⁵ Verizon testified on cross-examination that PWC was provided with a list of six assertions about its electronic billing and PWC was required to review documentation and processes to verify if the six assertions were accurate. *See* Initial Brief of Worldcom, Inc., on the Application by Verizon for Authorization to Provide In-Region, InterLATA Services in New Jersey, *I/M/O the Consultative Report on the Application of Verizon New Jersey, Inc. for FCC Authorization to Provide In-Region InterLATA Service in New Jersey*, BPU Docket No. TO01090541 at 17 (Dec. 7, 2001) (hereinafter *Worldcom Initial Brief to BPU*) (citing TR at 617).

¹⁶ Verizon NJ I - McLean/Wierzbicki/Webster Decl. at ¶ 116; KPMG Final Report at 347-52.

¹⁷ DOJ New Jersey I Evaluation at 5, n

¹⁸ Verizon NJ I - McLean/Wierzbicki/Webster Decl. at ¶ 116; *see also* Initial Brief of AT&T Corp., on the Application by Verizon for Authorization to Provide In-Region, InterLATA Services in New Jersey, *I/M/O the Consultative Report on the Application of Verizon New Jersey, Inc. for FCC Authorization to Provide In-Region InterLATA Service in New Jersey*, BPU Docket No. TO01090541 at 41 (Dec. 7, 2001); Initial Brief of ATX Licensing Inc., on the Application by Verizon for Authorization to Provide In-Region, InterLATA Services in New Jersey, *I/M/O the Consultative Report on the Application of Verizon New Jersey, Inc. for FCC Authorization to Provide In-Region InterLATA Service in New Jersey*, BPU Docket No. TO01090541 at 13-18 (Dec. 7, 2001).

¹⁹ *See Worldcom Initial Brief to BPU* at 18 (citing Verizon Bluvol/ Kumar Decl. (a/k/a Attachment 501) at Attachment 1).

²⁰ *See Worldcom Initial Brief to BPU* at 18-20. According to MCIWorldcom’s brief, for Assertion One, the

The apparent weaknesses in the third-party testing of Verizon's electronic billing functions highlights the need for actual commercial usage in order to ascertain if Verizon's billing systems are functioning properly.

As previously stated in the Ratepayer's Advocate's initial comments to the FCC, Verizon's electronic billing systems has not been subject to full commercial volumes such that any flaws present would be revealed.²¹ In fact, as of November 2001, only ten CLECs out of a possible 90 CLECs had elected BOS BDT as their bill of record in New Jersey.²² The low numbers of CLECs who currently utilize electronic billing in New Jersey further illustrates the need for additional testing to confirm whether newly implemented billing system changes have

100 key summarization points and billing items that appeared on the paper bill did not appear on the electronic bill. *Id.* at 20 (citing Attachment 501, Exhibit B). In Assertion Two, the BDT bills did not have the same dollar value as the paper bill. *Id.* at 18-19 (citing Attachment 501 at 12). In addition, following the manual review and adjustment process certain billing elements and summarization points on the BDT bills were different from those on the paper bills. *Id.* at 19. Assertion Three shows that Verizon's manual adjustment process resulted in electronic bills that did not provide detailed information to allow for recalculation of the adjustment. *Id.* Assertion Three also indicated that for loop, resale and platform invoices, the "bill from date" on the electronic bill was different from the paper bill by one day which was evident in 30 of the 45 bills reviewed by PWC. *Id.* (citing TR. at 634). Assertion Four also noted the problem with certain items on the electronic bill that appeared as a subtotal. *Id.* at 20 (citing Attachment 501 at 20).

²¹ RPA Initial Comments at 9.

²² Verizon NJ I- McLean/Wierzbicki/Webster Decl. ¶ 114.

been successful and are serving CLECs adequately. Without sufficient testing of Verizon's systems, the ability of Verizon's systems to support the billing needs of CLEC customers in a thriving local competitive market remains doubtful and, in turn, could have a detrimental effect on the ability of CLECs to serve growing numbers of customers efficiently.

As the DOJ pointed out in its New Jersey Evaluation, since "Verizon uses the same wholesale billing system in both New Jersey and Pennsylvania, the problems experienced by CLECs in obtaining accurate and auditable bills in Pennsylvania could occur in New Jersey."²³ As the FCC is aware, Verizon's introduction of electronic billing in Pennsylvania was replete with problems from its inception in January 2000,²⁴ and its billing systems still experienced problems after Verizon filed its 271 application in June 2001.²⁵ The electronic billing problems cited by CLECs in Pennsylvania involved significant formatting errors as well as missing information necessary for auditing of electronic bills.²⁶ Some of these same problems have befallen AT&T in New Jersey. Specifically AT&T points to formatting problems that prevent

²³ DOJ New Jersey II Evaluation at 5; *see also* DOJ New Jersey I Evaluation at 5-6 n.21.

²⁴ Evaluation of the U.S. Department of Justice, In re: Application by Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Pennsylvania, FCC CC Docket No. 01-138 at 8. ("DOJ Pennsylvania Evaluation") Electronic billing in Pennsylvania was suspended four months after it was initially introduced. Verizon reintroduced electronic billing in October 2000 and identified problems that had to be corrected. Verizon subsequently modified its billing systems to address the problems before filing their section 271 application in June 2001. Verizon conducted a manual review and adjustment process in April 2001 to ensure that the electronic bills matched the paper bills and to reconcile inconsistencies. Verizon then notified CLECs on May 22, 2001 that they would treat both paper and BOS BDT electronic bills as bills of record. *Id.* at 8-9.

²⁵ *Id.* at 11 n.43.

²⁶ *Id.* at 10-11 n.42.

them from using the electronic bills to verify the accuracy of Verizon's charges,²⁷ and despite repeated requests by AT&T to cure the problem, Verizon has failed to do so.²⁸ It is therefore imprudent of Verizon to assume that because Pennsylvania and New Jersey share the same billing system, any "enhancements and improvements"²⁹ done in Pennsylvania will automatically benefit CLECs in New Jersey and no billing problems will subsequently arise in New Jersey. This reasoning is flawed because the most reliable way of determining if New Jersey's billing systems are serving CLECs adequately is through actual commercial usage which is currently at dismally low levels in New Jersey.

²⁷ Comments of AT&T, Verizon Supplemental Filing at 19-20 ("AT&T FCC Comments"). The precise formatting problems encountered by AT&T include: (1) Verizon's failure to provide a telephone number for every charge listed on the bill, and (2) Verizon's inclusion of non-industry codes (such as Codes X99 and G93) on the BOS BDT bills which precludes AT&T from auditing the bills and from inputting data from the bills into its own systems. *Id.* at 20; AT&T FCC Comments, Declaration of Mohammed K. Kamal ¶¶ 14, 16 ("AT&T Kamal Decl.").

²⁸ AT&T FCC Comments at 20; AT&T Kamal Decl. ¶¶ 14-21.

²⁹ Verizon NJ I - McLean/Wierzbicki/Webster Decl. ¶ 115.

It is no surprise that there are low levels of actual commercial usage for electronic billing in New Jersey given the dearth of electronic billing performance data. In its initial comments to the FCC, the Ratepayer Advocate cited the lack of performance data as evidence that Verizon has not demonstrated that its wholesale electronic bill is readable, accurate, and auditable in compliance with checklist item 2.³⁰ Verizon was instructed by the Board to include three new electronic billing metrics in the New Jersey Carrier-to-Carrier Guidelines and New Jersey Incentive Plan, beginning February 2002.³¹ The metrics would measure the timeliness and accuracy of electronic bills.³² Although the electronic billing metrics are currently included in Verizon's Carrier-to-Carrier reports, no related performance data has, to date, been formally reported by Verizon. Verizon, however, did submit partial performance data for electronic billing metrics to the FCC, but only for October 2001, the month CLECs in New Jersey began taking advantage of the electronic billing option.³³ The October performance data submitted to the FCC are minimal at best and is simply not meaningful enough to evaluate the capabilities of

³⁰ RPA Initial Comments at 10.

³¹ New Jersey Board of Public Utilities, *I/M/O the Consultative Report of the Application of Verizon New Jersey, Inc. for FCC Authorization to Provide In-Region, InterLATA Service in New Jersey*, Docket No. TO01090541, CC Docket No. 01-347, at 41 (Jan. 14, 2002) (“*Board Consultative Report I*”).

³² *Id.* The three metrics are BI-2-02, BI-3-04, and BI-3-05. BI-2-02 measures the percentage of carrier bills that Verizon sends to CLECs within ten business days of the bill date. The other two metrics report the percent of CLEC billing claims that Verizon acknowledges within two business days (BI-3-04) and the percent of CLEC billing claims that are resolved within 28 calendar days after acknowledgment (BI-3-05), both of which have a performance standard of 95 percent on time. *See* Verizon NJ I, Declaration of Elaine M. Guerard, Julie A. Canny, and Marilyn C. DeVito at ¶ 122. (“Verizon NJ I Guerard/Canny/DeVito Decl.”)

³³ Verizon Guerard/Canny/DeVito Decl ¶ 122. The data submitted applied to two of the three metrics recently included in NJ's Carrier-to-Carrier Guidelines. The metrics for which data was available are BI-2-02 which measures the percentage of carrier bills that VNJ sends to CLECs within 10 business days of bill date, and BI-3-04 which measures the percentage of CLEC billing claims VNJ acknowledges within two business days. Verizon claims to have achieved 100 percent for both metrics in the month of October. No data was available for metric BI-3-05 that measures the percentage of CLEC claims resolved within 28 days after acknowledgment. *Id.*

Verizon's OSS to perform for CLECs handling competitive order volumes. It has been the practice of the FCC to regard third-party studies as a supplement to reliable commercial data in deciding whether a BOC has complied with OSS.³⁴ The present case, however, has neither reliable performance data nor comprehensive third-party studies upon which the FCC can rely in deciding whether Verizon complies with checklist item 2.

Moreover, given the absence of electronic billing data on actual commercial usage, the FCC cannot rely upon the newly implemented Performance Assurance Plan ("PAP") for continued compliance with Section 271. The PAP is designed to prevent Verizon from discriminating against competitors through the imposition of monetary penalties under the New Jersey C2C Guidelines. As the PAP was implemented on November 1, 2001, Verizon was unable to provide data regarding its performance in the provision of OSS to competitors.³⁵ More importantly, neither consumers nor competitors have yet been able to discern whether the PAP will prove sufficient to ensure nondiscriminatory treatment by Verizon. Verizon must also demonstrate that it is able to perform all its OSS functions under the recently established PAP. The provision of reliable performance data for all metrics is the only way Verizon can be sure that its OSS is functioning at optimal levels. The paucity of reliable performance data for electronic billing in New Jersey calls into question whether the PAP can truly prevent Verizon from discriminating against CLECs with respect to billing functions.

Considering the impact of wholesale billing problems on competitors in the market and the specific problems experienced by CLECs in Pennsylvania and New Jersey, it is incumbent on

³⁴ *Pennsylvania Order* at ¶ 33.

³⁵ *See* RPA Verizon I Initial Comments, Selwyn Decl ¶ 21

the FCC to carefully examine whether Verizon's wholesale billing systems will serve CLECs adequately, and allow them the opportunity to effectively compete for customers in what has become a very difficult marketplace.

2. VERIZON HAS FAILED TO ADDRESS OTHER ERRORS IN THE BOARD'S FINAL UNE ORDER WHICH RESULT IN UNE RATES WHICH ARE NOT TELRIC COMPLIANT.

1. Incorrect Busy Hour Inputs Used by Verizon Results in Overstated Switching Rates

In initial Comments, the Ratepayer Advocate stated that the Board's local switching rates are outside the range of TELRIC-compliant rates for several reasons, including, but not limited to, improper inputs for busy hours. As noted in those Comments, the Board accepted Verizon NJ's proposal of 251 days, rather than a more reasonable 308 as recommended by other parties to the State proceeding. Also as noted in the Comments, the New York commission accepted 308 days as the proper busy hour input.³⁶

On the same day that the Ratepayer Advocate filed its Comments, the Pricing Policy Division ("PPD") submitted *ex parte* comments in this docket.³⁷ The PPD met with Telecordia, which explained busy hour engineering as executed with the Switching Cost Information System model. The materials submitted with the *ex parte* filing reveal that the methodology of measuring busy hours is not confined to a 251 days versus 308 days debate. Instead, the

³⁶ NY UNE Order at 34.

³⁷ *Ex Parte* Filing of Pricing Policy Division, Federal Communications Division: Letter to William F. Caton, Secretary, CC Docket 02-67 (Apr. 8, 2002).

Telecordia model provides an alternate method for the calculation of busy hours. At the least, the revelation of this model calls into question the Board's selection of a rate proposed by Verizon, which was previously rejected by a commission in a contiguous state.

The importance of busy hour calculations can be discerned from the just-released Order in the Vermont Section 271 Proceeding.³⁸ The Commission discussed the differences between Verizon's use of a 251 day basis and the 365 day basis favored by AT&T and Worldcom, but declined to pursue the matter because "[t]here is no Vermont rate proceeding record for us [the Commission] to review on this issue . . . because neither AT&T nor Worldcom raised this concern in the underlying rate proceeding."³⁹ By contrast, this issue was raised in the underlying Board proceeding.

The Board discussed in the final UNE Order the different busy hour bases proposed by VNJ and Worldcom.⁴⁰ Ultimately, the Board selected the rate proposed by VNJ. In separate Motions for Reconsideration filed on April 3, 2002, however, the Ratepayer Advocate⁴¹ and Worldcom⁴² disputed the switch usage rates the Board employed. Yet, while these Motions were

³⁸ I/M/O Application by Verizon New England, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) Verizon Global Networks, Inc., and Verizon Select Services, Inc., for Authorization to Provide In-Region, InterLATA Services in Vermont: Memorandum Opinion and Order, CC Docket No. 02-7, FCC 02-118 (rel. Apr. 17, 2002) (hereinafter "Vermont Order").

³⁹ Vermont Order at para. 31.

⁴⁰ NJ UNE Order at pp. 120-122.

⁴¹ I/M/O the Board's Review of Unbundled Network Elements Rates, Terms, and Conditions of Bell Atlantic-New Jersey: Motion for Reconsideration of the Ratepayer Advocate, New Jersey Board of Public Utilities Docket No. TO00060356, at 1 (Apr. 3, 2002).

⁴² I/M/O the Board's Review of Unbundled Network Elements Rates, Terms, and Conditions of Bell Atlantic-New Jersey: Motion for Reconsideration of Worldcom, Inc., New Jersey Board of Public Utilities Docket No. TO00060356, at pp. 9-12 (Apr. 3, 2002).

pending, the Board approved the refiled VNJ application. The paucity of busy hours discussion at the underlying Board level is due not to a lack of interest among the parties, but to an absence of full consideration thus far by the Board. Accordingly, while the Commission may state accurately that the record at the State level is thin, that is because the Board's accelerated approval of the second VNJ application excluded full review of the issues raised by the parties for reconsideration. Accordingly, genuine question as to the TELRIC compliance of these rates exists, and, unlike the Vermont proceeding, the Commission has a record, albeit not concluded, to consider.

The Ratepayer Advocate submits that the use of a lower busy hour rate in the contiguous states of New York and New Jersey indicates that the New Jersey rate is too high. Further, it has been demonstrated to the Commission that a range of busy hour models may be employed to determine the TELRIC compliant rate, and that the analysis is not limited to the 251 days versus 301 days examined by New York. Lastly, the busy hours issue is a pending matter of dispute within motions for reconsideration filed in the state UNE proceeding filed. All of these factors call into question the validity of the busy hours input that is currently utilized; the former raise substantive questions of validity, and the latter raises the specter that the Commission cannot rely solely upon the state's conclusion on this issue.

B. Verizon Has Not demonstrated That its Non-recurring Rates are TELRIC Compliant and Otherwise Satisfy Checklist Item 2

As discussed in our comments filed on April 8, 2002, the Ratepayer Advocate reiterates that Verizon has failed to show that the non-recurring rates were (1) set properly by the Board and otherwise comply with TELRIC and (2) fall within a range that a correct application of

TELRIC would produce. In comments filed by AT&T, and XO, these parties raise continuing concerns as to whether the hot cut rates are TELRIC compliant. These concerns reinforce our opinion that there are fundamental flaws inherent in the Board's setting of all non-recurring rates and not merely the hot cut rates. The non-recurring rates adopted by the Board are based upon cost studies and analysis that contain clear TELRIC errors that unlawfully inflates Verizon's non-recurring rates. Consequently, there can be no finding that Verizon has satisfied checklist item 2 in this proceeding.

Although the Board was given the opportunity to address the concerns raised over its application of TELRIC, the Board deferred any immediate review and indicated that it would closely scrutinize the issues raised in the motion for reconsideration filed by various parties.⁴³ The Board's decision to set permanent non-recurring rates after finding the work times to be biased, arbitrary and unreliable is solid and uncontroverted evidence of clear error in the application of TELRIC and legally deficient decision making. The results of that error are shown by the non-recurring rates set by the Board. Non-recurring rates that are not TELRIC compliant constitute a barrier to entry and frustrate and prevent meaningful competition.

The Board's decision to forge ahead and set permanent rates in lieu of setting only interim rates subject to further proceeding is another fundamental error. Nonetheless, the

⁴³ See Consultant Report of the New Jersey Board of Public Utilities submitted on April 4, 2002. The motions for reconsideration now pending raise issues as to flaws in the methodology of the Board in setting UNE rates in the first instance. As a result, the FCC without input from the Board and without the benefit a complete record will have to make a preliminary assessment as to whether the parties at this time have presented sufficient evidence to establish clear errors in the application of TELRIC. The FCC will not conduct a *de novo* review of the Board's pricing determinations. See *Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks, Inc., and Verizon Select Services Inc., For Authorization To Provide In-Region , InterLATA Services in Vermont*, CC Docket No. 02-7, Memorandum Opinion and Order, FCC 02-118 at ¶ 5 footnote 42 (rel. April 17, 2002) (*Vermont Order*).

Ratepayer Advocate submits that additional evidence is not needed to show the error or the harm resulting therefrom. A cursory review of non-recurring rates in the state of Maine demonstrate that New Jersey's non-recurring rates are grossly inflated and not TELRIC compliant.

Numerous non-recurring rates in New Jersey are several times higher than corresponding non-recurring rates in Maine. Due to the cost differences between Maine and New Jersey, one would expect lower non-recurring rates in New Jersey. This is not the case.

The Maine Public Utilities Commission issued a Supplemental Order on March 20, 2002 setting forth Final UNE rates based upon its application of TELRIC.⁴⁴ A comparison of the non-recurring rates set forth in the Supplemental Order with the non-recurring rates set by the Board show that the rates in Maine are generally substantially and materially lower than the rates in New Jersey.⁴⁵ For example, in New Jersey, the manual surcharges for line ports new initial are \$20.42 and \$29.18 expedited⁴⁶ whereas the corresponding rates in Maine are \$7.52 and \$11.15.⁴⁷ This comparison shows that New Jersey rates are between two and three times higher than the corresponding rates in Maine. Similar disparities exist in service order rates. The service order rates for dark fiber in Maine are \$21.49 and \$31.64 expedited.⁴⁸ The dark fiber service order rates in New Jersey are \$52.74 and \$75.34 expedited (Line 173 to Attachment C).

⁴⁴ A copy of the Supplemental Order is attached hereto as Exhibit A.

⁴⁵ The Maine PUC in the Supplemental Order identifies non recurring rate categories as service order, manual intervention surcharge, service connections-co wiring and installation dispatch out which correspond to the Board's non-recurring rate categories of service order, manual surcharge, installation and premises visit.

⁴⁶ BPU Final UNE Order, Attachment C, Line 17.

⁴⁷ Maine Supplemental Order at 7.

⁴⁸ *Id.*, at 5.

The quantitative differences identified above are the rule and do not represent isolated exceptions. One of the most striking comparison which supports the conclusion that non-recurring rates are inflated in New Jersey can be found in the non-recurring rates for xDSL conditioning and qualifications when compared to the same rates in Maine:

Service	Maine⁴⁹	New Jersey⁵⁰
Manual loop qualification (MLP)	\$40.40	\$105.52
MLP expedited	56.31	149.43
Engineering inquiry (EI)	52.68	138.33
EI expedited	73.64	195.46
Engineering Work Order (EWO)	240.59	566.05
EWO expedited	339.66	794.05
Removal of Load Coils (RLC) Under 21,000 feet	248.14	847.75
RLC expedited	340.81	1,110.69
Removal of Load Coils (RLC) Under 27,000 feet	329.39	1,118.53
RLC expedited	452.06	1,465.59
Removal of one Bride Tap (RBT) RBT expedited	77.00 105.77	206.44 269.72
RBT multiple	186.07	471.58
RBT expedited	255.57	616.59
Add Electronics (AE)	302.25	1,067.62

⁴⁹ *Id.* at 37-39.

⁵⁰ BPU Final UNE Order, Attachment B.

AE expedited	304.81	1,074.16
Cooperative Testing (CT)	11.81	31.72
CT expedited	15.67	
41.53		

The non-recurring rates for service connections in New Jersey are inflated as well as evidenced by the following comparison:

Service	Maine	New Jersey
Line port (LP)	\$5.21	\$20.42
LP expedited	NA	28.15
SMDI Port	69.45	345.96
SMDI expedited	NA	471.66
DS1 Switching Port	49.74	364.47
DSI expedited	NA	498.14
Trunk Port Switching ⁵¹	49.72	441.55
expedited	65.94	613.21

⁵¹ We assume that the trunk port switching is the same as the end office trunk port in line 21 of Attachment C. Line 23 lists a rate for installation for the tandem port of \$384.18 and \$530.62 for expedited. Maine lists a rate for TOPS trunk port service connections as \$69.45. The expedited rate is the same. See pages 17 and 18 of Supplemental Order.

As discussed in our initial comments, the disparities in non-recurring rates are most likely due to the work times associated with performing the various functions. As the Board noted, work times are one of the cost drivers for non-recurring rates.⁵² The Ratepayer Advocate submits that using Maine's non-recurring rates for comparison purposes is appropriate in this proceeding for the following reasons: First, The work time estimates and surveys used in New Jersey were based upon surveys or estimates provided by employees who worked across the Verizon footprint.⁵³ Therefore, one would expect the non-recurring rates in one state to be similar to those in another state with any difference explained by differences in labor rates. Second, Verizon uses uniform practices, procedures and engineering guidelines across its footprint. Third, Verizon asserts that it has and will implement "best practices" from mergers which in turn will generate efficiencies and uniformity in operations.⁵⁴ Fourth, serious flaws have been identified in the methodology used by Verizon in other states, such as Massachusetts, New York, and Vermont to estimate work times, therefore, Maine is a more appropriate benchmark for comparison purposes for non-recurring rates.⁵⁵ Fifth, Verizon has admitted in its

⁵² UNE Final Order at page 158.

⁵³ See UNE Final Order at pages 153-157 for discussion of derivation of work times based upon surveys and estimates of subject matter experts.

⁵⁴ *I/M/O Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184, Memorandum Opinion and Order, (FCC 00-223) (rel. June 2000) at ¶¶ 5, 239-244.

⁵⁵ See Examiner's Report at pages 112, 115-118 *I/M/O Investigation of Total Element Long-Run Incremental Cost (TELRIC) Studies and Pricing of Unbundled Network Elements*, Docket No. 97-505, dated January 18, 2002; affirmed by the Maine Public Utility Commission on February 12, 2002 in *Investigation of Total Element Long-Run Incremental Cost (TELRIC) Studies and Pricing of Unbundled Network Elements*, Docket No. 97-505, Order at pages 74-76 dated February 12, 2002; New York Public Service Commission, *Opinion and Order in Phase 2*, Consolidated Cases 95-C-0657, 94-C-000095, and 91-C-1174 (Dec. 22, 1997) (New York Phase 2) at 53; Verizon New England, Inc. d/b/a Verizon Massachusetts, Decision P.U./D.T.E. 96-73/74, Decision P.U./D.T.E. 96-75, and Decision P.U./D.T.E. 96-80/81 (rel. Oct. 15, 1999)

271 application filed in Maine on March 21, 2002, that the UNE rates including non-recurring rates are TELRIC compliant.⁵⁶ Lastly, Verizon has offered no evidence as to why the non-recurring costs for UNEs in Maine should be any different than its non-recurring costs for UNEs in other states. Absent such evidence, the non-recurring rates in Maine are a proper basis for conducting a comparison.

As shown above, there are substantial and wide disparities in non-recurring rates between the two states. Therefore, the Ratepayer Advocate submits that the evidence clearly supports the conclusion that the Board made substantial errors in the methodology used to derive non-recurring rates. Those errors were raised in the initial proceeding and have been reasserted in the various motions for reconsideration filed by the parties. The Board has declined to address these issues in our opinion due to Verizon's premature refiling of its application and the improper accelerated schedule asked for by Verizon and approved by the FCC. Verizon continues to try to

at 12, 13; Vermont PSB, *Investigation into New England Telephone and Telegraph Company's (NET's) tariff filing re: Open Network Architecture, including unbundling of NET's network, expanded interconnection, and intelligent networks in re: Phase II, Module 2 - Cost studies*, Order, Docket No. 5713 (rel. Feb. 4, 2000) (*Vermont UNE Rate Order*) at page 42.

⁵⁶ See *Application By Verizon New England For Authorization To Provide In-Region InterLATA Services In Maine*, CC Docket No.02-61 at pages 45-54. Since Verizon admits that the non-recurring rates in Maine are TELRIC compliant, the higher non-recurring rates in New Jersey are suspect. Of course, the Board identified the problem due to its determination that work times were "biased, arbitrary, and unreliable." See BPU Final UNE Order at 158 and 166-167 (where the Board states that it agrees with the Ratepayer Advocate).

game the system by refileing its 271 applications which precludes and prevents the Board from conducting a timely review and issuing a reasoned legally sufficient decision on the appropriateness of the UNE rates in New Jersey.

Therefore, the FCC can not rely upon the Board's Final Order to show that the rates are TELRIC compliant. After benchmarking the non-recurring rates to Maine's non-recurring rates, it is clear that the New Jersey rates are substantially inflated and the record contains no evidence to support the differences. The USF cost model shows that costs are substantially higher in Maine than in New Jersey.⁵⁷ UNE rates should reflect those differences and one would expect lower rates in New Jersey. This is not the case with non-recurring rates. Such rates in general are two times or more higher than the rates in Maine.

The Board correctly identified the error as a problem in work times, but then the Board compounded that error by setting permanent rates in lieu of interim rates. Such action is a clear error and otherwise constitutes arbitrary and capricious decision making. The FCC has consistently accepted interim rates and granted 271 approval in applications based upon interim rates. As stated in the Vermont Order, the FCC considers the following:

- (1) Whether an interim solutions to a particular rate dispute is reasonable underthe circumstances,
- (2) Whether the state commission has demonstrated its commitment to the Commission's pricing rules, and

⁵⁷ *Id.* at 52. (Verizon acknowledges that USF cost model shows cost are 127% higher than the costs in New York). New York costs are slightly lower than New Jersey costs. See Verizon's 271 application for New Jersey and Verizon's *ex parte* filing dated April 18, 2002.

- (3) Whether a provision is made for refunds or true-ups once permanent rates are set.⁵⁸

However, the FCC has not sanctioned the setting of permanent rates by state commissions when interim rates are required. In this proceeding, permanent non-recurring rates should not have been set after clear errors were established. The only option open to the Board was to set interim rates and it did not. The record reflects not only the error committed by the Board but the resultant harm flowing from that error which is permanent non-TELRIC compliant non-recurring rates in New Jersey.

⁵⁸ See *Vermont Order* at Appendix D entitled “Statutory Requirements” at ¶23 for the FCC’s position on the three factors.

Consequently, the non-recurring rates in New Jersey are not within a range of acceptable TELRIC rates and do not otherwise satisfy checklist item 2.⁵⁹ As a result, the FCC should reject Verizon's refiled 271 application as not satisfying checklist item 2.

III. CONCLUSION

As noted by the DOJ, concerns remain in Verizon's refiled application with respect to its hot cut rates and its provision of electronic billing. Additionally, errors in the inputs used by Verizon in calculating both its switching and nonrecurring rates have resulted in rates which are not TELRIC compliant and will only serve to thwart the development of a thriving competitive local exchange market in New Jersey. Accordingly, the Ratepayer Advocate respectfully submits that Verizon's application be denied.

Respectfully submitted,

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⁵⁹ If the Board had adopted only interim rates subject to further proceedings, such action may have warranted a finding that the New Jersey rates are adequate under checklist item 2. However, the rates adopted by the Board are permanent and not interim.